AT&T?s 11th-Hour Plan to Save Its Deal With T-Mobile
By ANDREW ROSS SORKIN

About an hour after AT&T announced its $39 billion acquisition of T-Mobile in March on a Sunday afternoon, I got a call at home. It was Randall L. Stephenson, AT&T?s chairman and chief executive. Mr. Stephenson, an affable man with a wry sense of humor, knew he would face a battle persuading regulators the deal should be approved. And with me.

As I peppered him with questions about why the government would possibly allow the No. 2 and No. 4 telephone carriers to merge ? a textbook example of creating a duopoly between AT&T and Verizon if there ever was one ? he deftly stood his ground. He was convinced the deal would happen.

?When you get to the facts, this is a deal that gets approved,? he insisted, rattling off a list of high-price bankers and lawyers who he said agreed with his assessment.

By now you know what has happened: the deal is on the verge of collapse with AT&T disclosing on Thanksgiving ? perhaps the best sign a company is revealing lousy news ? that it was withdrawing the deal?s application to the Federal Communications Commission, and perhaps more eye-opening, that it planned to take a $4 billion charge against earnings to account for the deal?s enormous breakup fee, perhaps the biggest fee ever paid for a failed transaction. The Justice Department is already suing to block the deal.

But AT&T has been secretly working on an audacious 11th-hour deal to salvage the transaction: AT&T is knee-deep in talks with Leap Wireless, a second-tier but growing wireless player, to sell it a big piece of T-Mobile?s customer accounts and some of its wireless spectrum, according to people involved in the negotiations.

AT&T hopes such a deal would placate the Justice Department enough for it to drop its opposition to AT&T?s acquisition of T-Mobile, these people said, or at least to strengthen AT&T?s hand if it goes to trial. The deal would make Leap the fourth-largest wireless carrier in the nation, but it would allow AT&T to retain enough of T-Mobile?s valuable wireless spectrum, which it says it badly needs to provide the kind of next-generation service that its customers expect, these people said.

If the Leap deal sounds a bit like a Hail Mary pass, that is because it is.

It is just as questionable as AT&T?s original deal to merge with T-Mobile. Even with creating a new

No. 4 player, it does little to change the duopoly that would be created as a result of the deal, making AT&T and Verizon clear favorites, while leaving Sprint, Leap and MetroPCS far behind; in particular, Leap and MetroPCS would probably still be without enough spectrum or cash flow to be truly competitive. A spokesman for AT&T declined to comment. A spokesman for Leap did not return a call.

Putting aside the antitrust laws, AT&T clearly missed the shifting mood in Washington. While regulators have become more permissive about large transactions, AT&T?s analysis ignored the growing opposition to big business represented by the Occupy Wall Street movement and the tonal change, fairly or not, by President Obama.

That?s not to say that AT&T and its army of advisers did not thoroughly think through pressing ahead with the T-Mobile deal. AT&T was so convinced the deal would be completed, even with significant divestitures ? which Mr. Stephenson hinted might be necessary from the very beginning ? that it agreed to pay that whopping breakup fee and hand over wireless spectrum to T-Mobile, too. (Kudos to the board of T-Mobile?s parent, Deutsche Telekom, for demanding the outsize breakup fee.)

AT&T?s decision to acquire T-Mobile ? paying almost twice its estimated value ? was a coldly calculated play for spectrum. According to one participant in a board meeting, a banker advised the company that the risk of losing the deal and paying the breakup fee was worth taking because it would also probably distract Sprint and make T-Mobile a lesser competitor. Of course, that calculus may sound self-serving: the bankers traditionally are paid only if the deal is consummated, so for the banker the risk is always worth taking.

According to Thomson Reuters and Freeman Consulting, AT&T?s advisers ? Greenhill & Company, Evercore Partners and JPMorgan Chase ? will make $18 million to $36 million each if the deal goes through. T-Mobile?s advisers, Deutsche Bank, Credit Suisse, Morgan Stanley and Citigroup, still stand to make a sizable sum even if the deal fails as a result of the breakup fee.

But the advisers that AT&T?s board were listening to most intently were the lawyers who would be on the front lines of the battle: Arnold & Porter and Crowell & Moring, which worked the antitrust strategy in Washington. (Sullivan & Cromwell worked on the deal mechanics.)

Those firms all charge by the hour, so the cynic ? or skeptic ? might suggest they had every incentive to push the deal ahead.

According to people involved in the decision-making process, the lawyers put the chances of success at 60 to 70 percent.

For AT&T?s board, that was a chance worth taking. The question they now must ask themselves: would they use those lawyers again?